## Bill

Received: 01/12/2011				Received By: jkreye			
Wanted: As time permits				Companion to LRB:			
For: Adm	ninistration-B	udget			By/Representing	Quinn	
May Con			e		Drafter: jkreye		
Subject: Tax, Business - crp inc, fran			Addl. Drafters:				
					Extra Copies:		
Submit v	ia email: YES						
Requeste	r's email:						
Carbon co	opy (CC:) to:	joseph.kre	ye@legis.wis	consin.gov			
Pre Topi	c:						
DOA:	.Quinn, BB022	22 -					
Topic:							
Combine	d reporting; sh	aring pre-2009	loss carry for	rwards			
Instructi	ions:						
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Drafting	History:						
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/P1	jkreye 01/13/2011	csicilia 01/17/2011	jfrantze 01/17/2011		sbasford 01/17/2011		State
/P2	jkreye 02/09/2011	csicilia 02/10/2011	rschluet 02/10/2011	L	cduerst 02/10/2011		State
/P3	jkreye 02/15/2011	csicilia 02/15/2011	jfrantze 02/15/2011	L	mbarman 02/16/2011		State

LRB-1003

02/16/2011 11:25:14 AM Page 2

Vers.	Drafted	Reviewed	Typed	<u>Proofed</u>	Submitted	<u>Jacketed</u>	Required
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Bill

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For: Adm	ninistration-B	udget			By/Representing	: Quinn			
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Bill

Received: <b>01/12/2011</b>
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Received By: jkreye

Wanted: As time permits

Companion to LRB:

For: Administration-Budget

By/Representing: Quinn

May Contact:

Subject:

Tax, Business - crp inc, fran

Drafter: jkreye

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to:

joseph.kreye@legis.wisconsin.gov

**Pre Topic:** 

DOA:.....Quinn, BB0222 -

**Topic:** 

Combined reporting; sharing pre-2009 loss carry forwards

**Instructions:** 

See attached

**Drafting History:** 

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For: Administration-Budget	By/Representing: Quinn
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Subject: Tax, Business - crp inc, fran	Addl. Drafters:
	Extra Copies:
Submit via email: YES	
Requester's email:	
Carbon copy (CC:) to: joseph.kreye@legis.wisconsin.gov	
Pre Topic:	
DOA:Quinn, BB0222 -	
Topic:	
Combined reporting; sharing pre-2009 loss carry forwards	
Instructions:	
See attached	
Drafting History:	
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/? jkreye	

FE Sent For:

### Kreye, Joseph

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

Sent: Thursday, January 13, 2011 2:29 PM

To: Kreye, Joseph

Subject: RE: Statutory Language Drafting Request

I think that they should be collapsed into one. This was originally language that DOR requested when the combined reporting statute was first introduced and I'm not sure that it was ever thoroughly gone through to avoid redundancy. As far as I can determine, there is no reason to keep these as two subdivisions.

The intent is to allow corporations with pre-2009 net business loss carry-forwards to share up to 10% of their pre-2009 loss carry-forwards with other members of the combined group to offset the income of other members of the combined group.

**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]

Sent: Thursday, January 13, 2011 2:19 PM

To: Quinn, Brian D - DOA

Subject: RE: Statutory Language Drafting Request

No. It would seem that both subdivisions relate to the same net business loss carry-forward amounts: the amounts remaining from before 2009. Although the second subdivision designates the amount described in that subdivision as "pre-2009 net business loss carry-forward" the amount in the first subdivision would also seem to fit that description as it is an amount computed "from a taxable year beginning prior to January 1, 2009".

The first subdivision allows a corporation to use "a portion" of that amount to offset the income of other members of the combined group. The first subdivision does not specify what that portion is supposed to be, whereas the second subdivision allows a 10 percent offset for what appears to be the same amount. What is the percentage of the allowable offset under the first subdivision?

Should the 2 subdivisions be collapsed into one or do they really relate to 2 separate amounts? And if they relate to 2 separate amounts, how do they differ?

Joe

Joseph Kreye Senior Legislative Attorney Legislative Reference Bureau 608 266-2263

From: Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]

Sent: Wednesday, January 12, 2011 4:36 PM

To: Kreye, Joseph

Subject: RE: Statutory Language Drafting Request

Under subdivision 2, the January 1, 2011 should read January 1, 2009. Does that clarify it?

Thanks.

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]

Sent: Wednesday, January 12, 2011 2:53 PM

To: Quinn, Brian D - DOA

Subject: RE: Statutory Language Drafting Request

It's not clear to me whether the instructions are providing one carry-forward amount or two. Is the amount under subdivision 2 supposed to be an elaboration of the amount under subdivision one or is it a completely different amount? Depending on how you answer this question, I may have more questions. Thanks.

Joe

Joseph Kreye Senior Legislative Attorney Legislative Reference Bureau 608 266-2263

**From:** Quinn, Brian D - DOA [mailto:Brian.Quinn@wisconsin.gov]

Sent: Wednesday, January 12, 2011 2:26 PM

To: Kreye, Joseph

Subject: RE: Statutory Language Drafting Request

You can forward them on to me. I'll be free between 4 and 5 today.

**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]

Sent: Wednesday, January 12, 2011 2:22 PM

To: Quinn, Brian D - DOA

**Subject:** FW: Statutory Language Drafting Request

Brian,

The drafting instructions contained in the attachment are not really clear. Should I talk to you about my questions or is there some one at DOR that I should contact.?

Joe

Joseph Kreye Senior Legislative Attorney Legislative Reference Bureau 608 266-2263

From: Hanaman, Cathlene

Sent: Wednesday, January 12, 2011 1:23 PM

To: Kreye, Joseph

Subject: FW: Statutory Language Drafting Request

From: Scott.Thornton@Wisconsin.gov [mailto:Scott.Thornton@Wisconsin.gov]

Sent: Wednesday, January 12, 2011 1:22 PM

To: Hanaman, Cathlene

Cc: Hetzel, Shayna - DOA; Thornton, Scott - DOA; Grinde, Kirsten - DOA; Quinn, Brian D - DOA

**Subject:** Statutory Language Drafting Request

Topic: Combined Reporting - Sharing Pre-2009 Loss Carryforwards

Tracking Code: BB0222

SBO Team: TTO

SBO Analyst: Quinn, Brian D - DOA Phone: (608) 266-1923 E-mail: brian.quinn@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent:

See attachment.

Attachments: True

Drafting Instructions for: Sharing Pre-2009 Loss Carryforwards

### I. Amend s. 71.255(6)(a) to read as follows:

(a) Except as provided in pars. (b) and (c), no tax credit...

# II. Create s. 71.255(6)(g) to read as follows:

- (c) 1. Subject to the limitations in s. 71.26(3)(n), for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward as computed under ss. 71.26(4) or 71.45(4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use a portion of that net business loss carry-forward to offset the income of all other members of the combined group on a pro rata basis, to the extent such income is attributable to the unitary business.
- 2. For purposes of this subdivision, "pre-2009 net business loss carry-forward" means a corporation's total net business loss carry-forward computed under ss. 71,26(4) or 71.45(4) as of the beginning of its first taxable year beginning on or after January 1, 2011. For each taxable year until the corporation's pre-2009 net business loss carry-forward is used or expired, the portion that may offset income of other members of the combined group is 10 percent of the corporation's pre-2009 net business loss carry-forward. If the full 10 percent of such net business loss carry-forward cannot be fully used to offset the income of all other members of the combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.



## State of Misconsin 2011 - 2012 LEGISLATURE



DOA:.....Quinn, BB0222 - Combined reporting; sharing pre-2009 loss carry forwards

## FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

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in 1-13-11



1 AN ACT ...; relating to: the budget.

# Analysis by the Legislative Reference Bureau TAXATION

INCOME TAXATION

Under current law, for each taxable year that a corporation that is a member of a combined group has an unused tax credit or tax credit carry-forward, the corporation may, after using that credit or credit carry-forward to offset its own tax liability for the taxable year, use that credit or credit carry-forward to offset the tax liability of all other members of the combined group.

Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use 10 percent of that net business loss carry-forward to offset the income of all other members of the combined group.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1

**SECTION 1.** 71.255 (6) (a) of the statutes is amended to read:

71.255 (6) (a) Except as provided in pars. (b) and, (c), and (d), no tax credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. A member of a combined group may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45, that was incurred by that same member in a taxable year beginning before January 1, 2009.

**SECTION 2.** 71.255(6)(c) 1. of the statutes is amended to read:

71.255 (6) (e) 1. Subject to the limitations provided under s. 71.26 (3) (n), and except as provided in par. (d), for each taxable year that a corporation that is a member of a combined group has an unused credit or credit carry-forward under s. 71.28 (4) or (5) or 71.47 (4) or (5), the corporation may, after using that credit or credit carry-forward to offset its own tax liability for the taxable year, use that credit or credit carry-forward to offset the tax liability of all other members of the combined group on a proportionate basis, to the extent such tax liability is attributable to the unitary business.

History: 2009 a. 2, 28, 276 SECTION 3. 71.255 (6) (d) of the statutes is created to read:

71.255 (6) (d) Subject to the limitations provided under s. 71.26 (3) (n), for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward as computed under s. 71.26 (4) or 71.45 (4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using

SECTION 3

up to

such net business loss carry-forward to offset its own income for the taxable year, use 10 percent of that net business loss carry-forward to offset the income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 10 percent of such net business loss carry-forward can not be fully used to offset the income of all other members of the combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.

- 3 -

### SECTION 9341. Initial applicability; Revenue.

(1) NET BUSINESS LOSS CARRY-FORWARD. The treatment of sections 71.255 (6) (a), (c), and (d) of the statutes first applies to taxable years beginning on January 1, 2011.

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(END)

### 2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

INSERT A	o (current law)

Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning on or after January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use the remaining net business loss carry-forward to offset the income of all other members of the combined group.

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2. Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group, as determined under this section, the corporation's net business loss carry-forward shall be available only to that corporation.

### Kreye, Joseph

From:

Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

Sent:

Wednesday, February 09, 2011 2:09 PM

To:

Kreye, Joseph

Subject: FW: Loss Carryforward Sharing

I just realized I forgot the draft number: 1003/P1

From: Quinn, Brian D - DOA

Sent: Wednesday, February 09, 2011 2:09 PM

To: Kreye, Joseph - LEGIS

Subject: Loss Carryforward Sharing

Joe,

A few changes to this draft.

• Change the percentage to 5% per year.

• Increase the loss carry-forward period to 20 years from 15.

• Effective date: First applies to taxable years beginning with January 1, 2012.

Let me know if you have any other questions.

Thanks.

-Brian 266-1923 71.26(4) \* 71.45(4) ?



## State of Misconsin 2011 - 2012 LEGISLATURE



DOA:.....Quinn, BB0222 - Combined reporting; sharing pre-2009 loss carry forwards

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.

## Analysis by the Legislative Reference Bureau **TAXATION**

#### INCOME TAXATION

Under current law, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning on or after January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use the remaining net business loss carry-forward to offset the income of all other members of the combined group.

Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 10 percent of that net business loss carry-forward to offset the income of all other members of the combined group.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

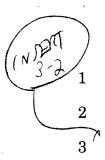
**SECTION 1.** 71.255 (6) (a) of the statutes is amended to read:

71.255 (6) (a) Except as provided in pars. (b) and, (c), and (d), no tax credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. A member of a combined group may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45, that was incurred by that same member in a taxable year beginning before January 1, 2009.

**Section 2.** 71.255 (6) (d) of the statutes is created to read:

71.255 (6) (d) 1. Subject to the limitations provided under s. 71.26 (3) (n), for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward as computed under s. 71.26 (4) or 71.45 (4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 10 percent of that net business loss carry-forward to offset the income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 10 percent of such net business loss carry-forward cannot be fully used to offset the income of all other members of the combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.

2. Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group, as determined under this section, the



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corporation's net business loss carry-forward shall be available only to that corporation.

SECTION 9341. Initial applicability; Revenue.

(1) Net business loss carry-forward. The treatment of sections 71.255 (6) (a),

(c), and (d) of the statutes first applies to taxable years beginning on January 1, 201

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(END)

171.26(4) pand 71.45(4)

2012

### 2011-2012 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

### Insert A

Under current law, generally, a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the previous 15 taxable years. Under the bill, a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the previous 20 taxable years.

### Insert 3 - 2

**SECTION 1.** 71.26 (4) of the statutes is amended to read:

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71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option corporation or an insurer to which s. 71.45 (4) applies, may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 15 20 preceding taxable years, if the corporation was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed. For purposes of this subsection Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions in computing net income. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.25 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this subsection.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28, 161, 165, 180, 183, 205, 265, 269, 295, 332, 344; s. 13.92 (1) (bm) 2., (2) (i).

SECTION 2. 71.45 (4) of the statutes is amended to read:

71.45 (4) NET BUSINESS LOSS CARRY-FORWARD. Insurers computing tax under this subchapter may subtract from Wisconsin net income any Wisconsin net business loss sustained in any of the next 15 20 preceding taxable years to the extent not offset by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9. and this subsection and limited to the amount of net income, but no loss incurred for a taxable year before taxable year 1987 by a nonprofit service plan of sickness care under ch. 148, or dental care under s. 447.13 may be treated as a net business loss of the successor service insurer under ch. 613 operating by virtue of s. 148.03 or 447.13.

**History:** 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; s. 13.92 (1) (bm) 2., (2) (i).

### Kreye, Joseph

From:

Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

Sent:

Tuesday, February 15, 2011 3:07 PM

To:

Kreye, Joseph

Subject: Re: Combined Reporting Change

Joe,

Rebecca Boldt indicated that DOR thinks that the extended carryforward provision should only apply to corporations filing as a combined group and not all corporations. This is LRB-1003/P2.

From Mike Oakleaf (his revisions below were to the initial draft so they have cross-outs of 10% and got with the 5% we are at now):

"Here's my stab at drafting instructions:

### Amend draft s. 71.255(6)(d)1.

71.255 **(6)** (d) 1. Starting with the first taxable year beginning after December 31, 2011 and for each of the 20 subsequent taxable years, and subject to the limitations provided under s. 71.26 (3) (n), for each taxable year that a corporation that is a member of a combined group has net business loss carry–forward as computed under s. 71.26 (4) or 71.45 (4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry–forward to offset its own income for the taxable year, use up to 405 percent of that net business loss carry–forward to offset the income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 405 percent of such net business loss carry–forward cannot be fully used to offset the income of all other members of the combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.

### Delete bill section 9341 (1)."

To summarize, put in the provision after 71.255 (6)(d)1 specifying the effective date and the 20 years that a corporation in a combined group may carryforward the NOLs. Change back the other provisions to just be 15 years as opposed to 20 on page 3 line 11 and page 4 line 3 (or just delete those pages if that's how to handle it). The intent of these changes is so that only corporations in a combined group can carryforward losses for 20 years.

Let me know if you have questions.

Thanks.

Brian Quinn
Executive Policy & Budget Analyst
Department of Administration
Division of Executive Budget and Finance
(608)-266-1923
brian.quinn@wisconsin.gov



# State of Misconsin



DOA:.....Quinn, BB0222 - Combined reporting; sharing pre-2009 loss carry forwards

## FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Motgan in

AN ACT ...; relating to: the budget.

# Analysis by the Legislative Reference Bureau TAXATION

### INCOME TAXATION

Under current law, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning on or after January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use the remaining net business loss carry-forward to offset the income of all other members of the combined group.

Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 5 percent of that net business loss carry-forward to offset the income of all other members of the combined group.

Under current law, generally, a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the previous 15 taxable years. Under the bill, a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the previous 20 taxable years.

Under the bill; any remaining net business loss carry-forward may be upplied to income for the 20 integrent taxable years.

(Par)

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

# The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**Section 1.** 71.255 (6) (a) of the statutes is amended to read:

71.255 (6) (a) Except as provided in pars. (b) and, (c), and (d), no tax credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. A member of a combined group may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45, that was incurred by that same member in a taxable year beginning before January 1, 2009.

**SECTION 2.** 71.255 (6) (d) of the statutes is created to read:

71.255 (6) (d) 1. Subject to the limitations provided under s. 71.26 (3) (n), for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward as computed under s. 71.26 (4) or 71.45 (4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 5 percent of that net business loss carry-forward to offset the income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 5 percent of such net business loss carry-forward cannot be fully used to offset the income of all other members of the

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Afor 20 subsequent taxable years)

combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.

2. Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group, as determined under this section, the corporation's net business loss carry-forward shall be available only to that corporation.

### **SECTION 3.** 71.26 (4) of the statutes is amended to read:

71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option corporation or an insurer to which s. 71.45 (4) applies, may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 15 20 preceding taxable years, if the corporation was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed. For purposes of this subsection Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions in computing net income. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.25(6) and (10)to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this subsection.

**Section 4.** 71.45 (4) of the statutes is amended to read:

71.45 (4) NETBUSINESS LOSS CARRY-FORWARD. Insurers computing tax under this subchapter may subtract from Wisconsin net income any Wisconsin net business loss sustained in any of the next 15 20 preceding taxable years to the extent not offset by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9. and this subsection and limited to the amount of net income, but no loss incurred for a taxable year before taxable year 1987 by a nonprofit service plan of sickness care under ch. 148, or dental care under s. 447.13 may be treated as a net business loss of the successor service insurer under ch. 613 operating by virtue of s. 148.03 or 447.13.

### SECTION 9341. Initial applicability; Revenue.

(1) NET BUSINESS LOSS CARRY-FORWARD. The treatment of sections 71.255 (6) (a), (c), and (d), 71.26 (4), and 71.45 (4) of the statutes first applies to taxable years beginning on January 1, 2012.

### Kreye, Joseph

From: Quinn, Brian D - DOA [Brian.Quinn@wisconsin.gov]

Sent: Tuesday, February 15, 2011 4:11 PM

To: Kreye, Joseph

Subject: FW: Options for Loss Sharing (2).doc

From: Boldt, Rebecca A - DOR

Sent: Tuesday, February 15, 2011 4:10 PM

To: Quinn, Brian D - DOA

Cc: Oakleaf, Michael P - DOR; Kvammen, Craig J - DOR; Lucash, Gerry - DOR

Subject: FW: Options for Loss Sharing (2).doc

Brian:

We have a few more issues on this draft LRB 1003/P2:

1. Page 2: line 17 should read:

"up to 5 percent of that the remaining net business loss carry-forward to offset the income of all other

- 2. See Mike's draft below to clarify that the sharing goes on for 20 years
- 3. DOR would like to include language that gives us statutory authority for rule making related to this provision.

From: Oakleaf, Michael P - DOR

Sent: Tuesday, February 15, 2011 2:52 PM

To: Boldt, Rebecca A - DOR

**Subject:** FW: Options for Loss Sharing (2).doc

The idea behind the 20-year carryforward period was to allow them to use up the pre-2009 losses at a rate of 5% per year for 20 years ( $5\% \times 20 = 100\%$ ). So every year they take 5% of those losses and share them. It's kind of like what they did with the manufacturing investment credit, where they were allowed to amortize the carryforwards of the MSTC for 15 years, taking 1/15 of the total carryforward each year.

From: Oakleaf, Michael P - DOR

Sent: Tuesday, February 08, 2011 1:36 PM

To: Boldt, Rebecca A - DOR

Subject: RE: Options for Loss Sharing (2).doc

Here's my stab at drafting instructions:

### Amend draft s. 71.255(6)(d)1.

71.255 (6) (d) 1. Starting with the first taxable year beginning after December 31, 2011 and for each of the 20 subsequent taxable years, and subject to the limitations provided under s. 71.26 (3) (n), for each taxable year that a corporation that is a member of a combined group has net business loss carry—forward as computed under s. 71.26 (4) or 71.45 (4) from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry—forward to offset its own income for the taxable year, use up to 105 percent of that net

business loss carry—forward to offset the income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 105 percent of such net business loss carry—forward cannot be fully used to offset the income of all other members of the combined group, the remainder may be added to the portion that may offset the income of all other members of the combined group in the subsequent year.

### Delete bill section 9341 (1).

From: Boldt, Rebecca A - DOR

Sent: Tuesday, February 08, 2011 12:33 PM

To: Oakleaf, Michael P - DOR

**Subject:** FW: Options for Loss Sharing (2).doc

fyi

From: Chandler, Richard G - DOR

Sent: Tuesday, February 08, 2011 12:31 PM

To: Hayes, Brian - DOA; Schmiedicke, David P - DOA; Grinde, Kirsten - DOA Cc: Koskinen, John B - DOR; Jablonski, Jack - DOR; Boldt, Rebecca A - DOR

**Subject:** FW: Options for Loss Sharing (2).doc

Here are the options for dealing with trapped losses related to combined reporting. I would recommend option 2. Under that option, we would draft language to change our loss carryover period from 15 years to 20 years (for corporations only).

Let us know if you have questions.

### Rick

From: Boldt, Rebecca A - DOR

Sent: Tuesday, February 08, 2011 10:30 AM

To: Chandler, Richard G - DOR; Jablonski, Jack - DOR; Koskinen, John B - DOR; Hardt, Diane L - DOR

Cc: Oakleaf, Michael P - DOR

Subject: Options for Loss Sharing (2).doc

<< File: Options for Loss Sharing (2).doc >>

#### Rick:

Here is the menu list for the sharing of losses within a combined group.

Let us know if you would like any other alternatives included.

#### Rebecca

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## State of Wisconsin 2011 - 2012 LEGISLATURE

TOBAY AM

DOA:.....Quinn, BB0222 - Combined reporting; sharing pre-2009 loss carry forwards

## FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau the hemaining

### **TAXATION**

#### INCOME TAXATION

Under current law, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning on or after January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use the remaining net business loss carry-forward to offset the income of all other members of the combined group.

Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 5 percent of that net business loss carry-forward to offset the income of all other members of the combined group. Under the bill, any remaining net business loss carry-forward may be applied to income for the 20 subsequent taxable years.

and for each of the 20 JK:cjs:jf subsequent taxable years, and

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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subsequent taxable years.

2. Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group, as determined under this section, the corporation's net business loss carry-forward shall be available only to that corporation.

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23. The department shall groundgate rules to administer this ) subdivision

LRB-1003/P2 JK:cjs:rs

For further information see the  $\it state$  fiscal estimate, which will be printed as an appendix to this bill.

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**Section 1.** 71.255 (6) (a) of the statutes is amended to read:

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## State of Misconsin 2011 - 2012 LEGISLATURE



DOA:.....Quinn, BB0222 - Combined reporting; sharing pre-2009 loss carry forwards

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

# Analysis by the Legislative Reference Bureau TAXATION

#### INCOME TAXATION

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Under this bill, for each taxable year that a corporation that is a member of a combined group has net business loss carry-forward from a taxable year beginning prior to January 1, 2009, the corporation may, after using such net business loss carry-forward to offset its own income for the taxable year, use up to 5 percent of the remaining net business loss carry-forward to offset the income of all other members of the combined group.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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- 2. Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group, as determined under this section, the corporation's net business loss carry-forward shall be available only to that corporation.
  - 3. The department shall promulgate rules to administer this paragraph.

6 (END)